

Commissary Service Agreement

This Commissary Service Agreement is effective as of the 15th day of January, 2017 between Madison County N.C. Sheriff's Office ("Customer") and Kimble's Commissary Services, a wholly owned division of Kimble's Foods By Design, Inc. ("Kimble's"). Once executed this document supersedes all agreements, written or verbal between the parties.

Customer desires and Kimble's agrees to provide certain commissary services to the inmates housed in the Madison County Sheriff's Office ("Facility") and to provide the software and equipment necessary to render such services.

Now therefore, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Scope of Services.

(a) Customer grants Kimble's the **sole and exclusive** right to:

(i) sell products and services to inmates of the Facility including but not limited to personal care items, beauty products, toiletries, clothing, food, email access, e-cigarettes and related products. Customer shall not allow any party other than Kimble's to sell any conflicting products or services to inmates of the Facility. All products and services sold to inmates will be listed on a menu agreed upon by Customer and Kimble's. The prices of these products and services will be reviewed annually. Both parties agree that fluctuation in market prices may require price adjustments on individual products or services at intervals more frequently than once each year. Kimble's shall be responsible for payment of all applicable taxes on products or services purchased by inmates. The pricing on menus presented to inmates to purchase goods and services shall include all applicable taxes.

(ii) sell products on Kimble's website for purchase by friends and family of inmates which will be delivered to a designated inmate ("Care Pack Services Program"). Customer shall not allow any party other than Kimble's to sell any conflicting product or service to the friends and family of inmates of the Facility. All products sold through the Care Pack Services program will be listed on a menu agreed upon by Customer and Kimble's. The prices of these products will be reviewed annually. Both parties agree that fluctuation in market prices may require price adjustments on individual products at intervals more frequently than once each year. Kimble's shall be responsible for payment of all applicable taxes on products or services purchased through the Care Pack Services Program. The pricing reflected on the Care Pack Services Program menu shall include all applicable taxes.

(iii) accept and maintain deposits into inmate trust accounts via web, lobby kiosk, or any other type of deposit service instituted by Kimble's. Customer will not permit, allow or accept deposits into inmate trust accounts through any party other than Kimble's.

(iv) install and maintain the software and equipment necessary to sell commissary products and services to inmates of the Facility. Customer may not resell any of the software or equipment including any of the applications related thereto or provide access to such applications directly or indirectly to third parties. Customer shall not use any of Kimble's software, equipment or related applications to facilitate the sale of any product or service to inmates with the exception of inmate phone debit calling through the inmate phone provider Securus or future phone providers with which Kimble's has a working relationship..

(v) install and operate one or more financial kiosks designed for the purpose of funding inmate accounts. Customer shall not allow any party other than Kimble's to install or maintain a financial kiosk at the Facility. Customer may allow a traditional banking ATM.

(b) In order to provide the services specified herein, Kimble's agrees to provide Customer:

(i) Access to and use of "Lockdown" jail inmate financial management software.

(ii) Inmate Release Debit Cards. No fees will be charged on any debit card issued to a released inmate if the debit card balance is used or otherwise withdrawn by the inmate within two (2) days of release (Kimble's cannot control transaction fees charged by merchants such as ATM fees).

(iii) Equipment to write checks to inmates for the balance held in the inmate's trust account.

(iv) One (1) Jail ATM Lobby Kiosk capable of accepting cash, credit and debit cards. Kimble's will collect a \$3.00 transaction fee for cash transactions and a 10% deposit transaction fee with a \$2.50 minimum for each credit/debit card transaction. Kimble's will insure that all fees charged are in compliance with all Federal and State laws.

(v) One (1) Booking Manager Kiosk capable of taking bills and coins from arrestees and immediately place collected funds in the arrestees trust fund account. (no user fees will be charged).

(vi) A portal for Web Deposits at www.jailatm.com. Kimble's will collect a 10% deposit transaction fee with a \$2.50 minimum for each transaction. Kimble's will insure that all fees charged are in compliance with all Federal and State laws.

(vii) Patent-Pending Swipe at Booking Technology to increase commissary sales. Kimble's will collect a 10% deposit transaction fee with a \$3.25 minimum for each transaction.

(viii) Technical and accounting support at no cost.

(ix) Twenty Four (24) hour monitoring of on-site equipment.

(x) Inventory of personal care items, beauty products, toiletries, clothing, food, and related products for sale to the inmates.

(xi) Software necessary to administer the processing of inmate commissary orders as well as printers and other related equipment for the commissary process.

(xii) A portal on the JailATM Website for the Care Pack Services Program.

(xiii) A portal on the JailATM website allowing friends and family to send and receive electronic messages from inmates. Kimble's will collect a fee of \$0.50 for each message sent or received.

(xiv) (5) kiosks for use by inmates to order commissary, check account balances, send and receive electronic email, access information such as inmate handbooks, electronic messaging for such activities as visitation scheduling, requesting medical and dental appointments, filing

grievances, inmate requests and other communication processes with facility staff.

(c) In order for Kimble's to provide the services specified herein, Customer agrees that:

(i) All workstations for administrative and book in processing use by staff shall meet the following minimum requirements:

WORKSTATION REQUIREMENTS	
Processor	Personal computer (PC) with a minimum 1 gigahertz (GHz) or processor clock speed recommended; Intel Pentium/Celeron family, or AMD K6/Athlon/Duron family, or compatible processor recommended higher
Operating System	Windows XP or better
Browser	Microsoft Internet Explorer 7.0 or better
Memory	At least 128 (MB) of RAM; 256 MB for optimum speed
Drive	USB
Display	Super VN.C. (1,024 x 768) or higher-resolution video adapter and monitor
Peripherals	Keyboard and Microsoft Mouse or compatible pointing device
INTERNET ACCESS REQUIREMENTS	
DSL or Cable Modem	Data Rate: 1.5 Mbits downstream and 384Kbits upstream, minimum NOTE: You are required and responsible for obtaining and installing anti-virus and firewall protection software for connectivity to and from the Internet.

(ii) Customer shall ensure that there is 110V service at the installation point of each pod kiosk.

(iii) Customer shall ensure that there is a location for the placement of the Kimble's computer server at the Cat5/6 termination point for connectivity to the lobby kiosk.

(iv) Customer shall ensure reasonable access to the facility to Kimble's personnel to service equipment.

(v) Customer shall ensure that there is High Speed internet service for use with the Kimble's Server and sufficient internal static IP addresses for the Kimble's equipment.

(vi) Customer shall be responsible for removal of cash from the lobby and booking kiosks.

(vii) Customer shall provide a lobby location for the lobby kiosk reasonably situated to facilitate public access.

(viii) Customer shall provide a reasonable level of security for the lobby kiosk and all other equipment owned by Kimble's. If any of Kimble's equipment is vandalized or damaged by an inmate, then Customer agrees to cooperate with Kimble's to seek restitution from responsible inmate(s) for such damages.

(ix) Customer shall provide a reasonable level of security for the safety of all Kimble's employees carrying out duties at the Facility.

(x) Customer is solely responsible for regular reconciliation of financial records maintained on the software provided by Kimble's including but not limited to inmate trust accounts.

2. **Term.** The "Term" of this Agreement shall commence on or about January 15, 2017 and will continue for three years thereafter. At the expiration of the original term, the Agreement shall auto renew for its original term. Notwithstanding anything to the contrary, the terms and conditions of this Agreement shall continue to apply for so long as Kimble's continues to provide services hereunder to Customer after the expiration or termination of this Agreement.

3. **Commissions Paid to Customer.** Kimble's shall pay a commission of: 27% to Customer on the gross sales of all products purchased by inmates of the Facility and all products purchased through the Care Pack Services Program less applicable taxes. Notwithstanding the foregoing, no commission shall be paid on the sale of U.S. Postal items or kits purchased by the Customer for indigent inmates.

4. **Customers Use of Software Licenses.** Kimble's through its business relationship with Tech Friends Inc. grants Customer a non-exclusive, non-transferable license to use (without the right to sublicense) and to access certain proprietary computer software products and materials in connection provision of services hereunder ("Software"). The Software includes any upgrades, modifications, updates, and additions to existing features that are implemented in Kimble's sole discretion (the "Updates"). Kimble's warrants and represents that the Software is warranted to meet GAAP (General Applied Accounting Principles) standards. Customer authorizes Kimble's to provide or preinstall the third-party software and agrees that Kimble's may agree to the third party End User License Agreements on Customer's behalf. Customer's right to use any third-party software product that Kimble's provides shall be limited by the terms of the underlying license that Kimble's obtained for such product. The Software is to be used solely for Customer's internal business purposes in connection with the provision of the services contemplated hereby. Customer will not permit a third party to use the Software, assign, sublicense, lease, encumber, or otherwise transfer or attempt to transfer the Software or any portion thereof, process or permit to be processed any data of any other party with the Software, alter, maintain, enhance, disassemble, decompile, reverse engineer or otherwise modify the Software or allow any third party to do so, connect the Software to any products that Kimble's did not furnish or approve, or ship, transfer, or export the Software into any country, or use the Software in any manner prohibited by the export laws of the United States. Kimble's is not liable with regard to any Software that Customer uses in a prohibited manner. Customer shall indemnify Kimble's, and the agents, servants, and all employees of Kimble's, and shall defend, save and hold them harmless from and against any claim, suit, legal proceeding, judgment, decree, loss, cost, damage or expense (including, but not limited to, reasonable attorney's and other costs and expenses incident to the investigation or the defense of any claim, suit or legal proceeding) arising from or growing out of Customer's unauthorized or prohibited use of the Software caused by the negligent acts or omissions or misconduct of Customer, any subcontractor of Customer or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be responsible or liable, except to the extent caused by the sole negligence of Kimble's, its officers, employees and agents.

5. **Certifications and Indemnity of Kimble's.** Kimble's agrees to comply with the requirements of Article 2 of Chapter 64 of the N.C. Code ("E-Verify") and if Kimble's provides services to the Customer utilizing a subcontractor, Kimble's shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64. Kimble's agrees to verify compliance by affidavit upon request

by the Customer. Notwithstanding any other provision herein, Kimble's shall indemnify Customer, and the agents, servants, employees and all elected officials of Customer, and shall defend, save and hold the Indemnities harmless from and against any claim, suit, legal proceeding, judgment, decree, loss, cost, damage or expense (including, but not limited to, reasonable attorney's and other costs and expenses incident to the investigation or the defense of any claim, suit or legal proceeding) arising from or growing out of the injury to or death of any person or the damage to or loss of any property (including, but not limited to, property of Kimble's) caused by the grossly negligent acts or omissions or misconduct of Kimble's, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be responsible or liable, except to the extent caused by the negligence of the Customer, its elected officials, officers, employees and agents.

6. **Relationship of Parties.** Kimble's is an independent contractor of Customer. Kimble's represents that it has or will secure, at its own expense, all personnel required in performing the services under this Agreement. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform such services. It is further agreed that the Kimble's will obey all State and Federal statutes, rules and regulations which are applicable to provisions of the Commissary Services. Neither Kimble's nor any employee of the Kimble's shall be deemed an officer, employee or agent of the Customer. Kimble's shall ensure that it maintains a properly executed IRS Form W-9 for all such employees.

7. **Confidentiality.**

(a) To the extent permitted by law, the Software, Updates and the applications and related data and information (the "Confidential Information") shall at all times remain confidential to Kimble's. Customer will not disclose such Confidential Information to any third party unless required by Public Records Laws, subpoena, court order, or other applicable law. Because Customer will be able to access Confidential Information of third parties that is protected by certain federal and state privacy laws through the Software and its applications, Customer agrees that it will only access the Software with computer systems that have effective firewall and anti-virus protection.

(b) Kimble's may, during the course of providing services hereunder or in relation to this Agreement have access to, and acquire knowledge regarding personnel, inmates, materials, data, systems, and other information which may not be accessible or known to the general public. Any knowledge acquired by Kimble's from such materials shall not be used, published or divulged by Kimble's to any person, firm or other entity unless required by subpoena, court order, or other applicable law.

8. **Insurance.**

(a) Kimble's shall obtain, at its sole expense, all insurance as required in the Customers contract control policy and shall not commence work until such insurance is in effect and certification thereof has been received by the Customer's Finance Director. Such insurance shall name the Customer as an Additional Insured under both General Liability and Auto Liability policies. Should said Certificate of Insurance expire prior to the termination of this Agreement, Kimble's shall supply to the Customer an updated certification prior to the expiration of the Certificate initially provided.

(b) Customer agrees to provide Kimble's with reasonable and timely written notice of any claim, demand, or cause of action made or brought against Customer arising out of or related to the utilization of the Software or provision of the Commissary Services in which Kimble's is brought in as a co-

defendant in the Claim. Kimble's has the right to defend any such claim, demand, or cause of action at Kimble's sole cost and expense.

9. **Termination of Agreement.** If either party defaults in the performance of any obligation under this Agreement, then the non-defaulting party shall give the defaulting party written notice of its default, setting forth specifically the nature of the default. If the defaulting party fails to cure its default within ninety (90) days after receipt of the notice of default, then the non-defaulting party shall have the right to terminate this Agreement upon thirty (30) days written notice. Notwithstanding the foregoing, in the event this Agreement is terminated by either party, there shall be no disruption of service between the termination of the existing services and the implementation of an alternate commissary service. Kimble's shall continue providing commissary services until a new vendor is selected to provide such services.

10. **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, neither party shall have any liability for indirect, incidental, special or consequential damages, loss of profits or income, loss or corrupted data, or loss of use of other benefits, howsoever caused and even if due to the party's negligence, breach of contract, or other fault, even if such party has been advised of the possibility of such damages.

11. **Force Majeure.** Either party may be excused from performance under this Agreement to the extent that performance is prevented by any act of God, war, civil disturbance, terrorism, strikes, supply or market, failure of a third party's performance, failure, fluctuation or non-availability of electrical power, heat, light, air conditioning or telecommunications equipment, other equipment failure or similar event beyond its reasonable control; provided, however that the affected party shall use reasonable efforts to remove such causes of non-performance.


12. **Notices.** Any notice or demand made by either party under the terms of this Agreement or under any statute shall be in writing and shall be given by personal delivery; registered or certified U.S. mail, postage prepaid; or commercial courier delivery service, to the address below the party's signature on this document, or to such other address as a party may designate by written notice in compliance with this section.

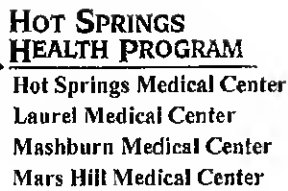
13. **Access to and Record Retention.** Kimble's agrees to maintain all records of or related to the Commissary Services and shall, upon the Customer's request, provide the Customer with, or access to, said records.

14. **Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State of N.C. Unless prohibited by law, any action resulting from this Agreement shall be brought in Madison County N.C. No waiver by either party of any event of default under this Agreement shall operate as a waiver of any subsequent default under the terms of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected. This Agreement shall be binding upon and inure to the benefit of Kimble's and Customer and their respective successors and permitted assigns, Each signatory to this Agreement warrants and represents that he or she has the unrestricted right and requisite authority to enter into and execute this Agreement, to bind his or her respective party, and to authorize the obligations of the respective parties as set forth herein. This Agreement cannot be modified orally and can only be modified by a written instrument signed by all parties. The parties' rights and obligations, which by their nature would extend beyond the termination, cancellation, or expiration of this Agreement, shall survive such termination, cancellation, or expiration (including, without limitation, any

payment obligations for services or equipment received prior to such termination, cancellation, or expiration). This Agreement may be executed in counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument. This Agreement constitutes the entire agreement of the parties regarding the subject matter set forth herein and supersedes any prior oral or written agreements or guarantees regarding the subject matter set forth herein.

15. **Iran Divestment Act Certification.** Kimble's commissary hereby certifies that Kimble's commissary, and its subcontractors, are not on the Iran Final Divestment List ("List") created by the North Carolina State Treasurer pursuant to N.C.G.S. 143-6A-4. Kimble's commissary shall not utilize any subcontractor that is identified on the List.

<u>CUSTOMER:</u>  By: _____ Name: <u>TOM BANKS</u> Title: <u>JAIL ADMINISTRATOR</u> Date: <u>01-17-2017</u> <u>Customer's Notice Address and Phone:</u> Madison County Sheriff's Office 348 Medical Park Dr. Marshall, N.C. 28753 Phone: (828) 649-2721	<u>KIMBLE'S:</u> Kimble's Commissary Service By: _____ Name: _____ Title: _____ Date: _____ <u>Kimble's Notice Address and Phone:</u> Kimble's Commissary Services 607 Hines Street LaGrange, GA 30241 Phone: (706) 884-5527
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Office Use Only	
FD-Info Updated _____	(Initials)
FD-Form Scanned/Attached _____	(Initials)
Date patient contacted: _____	
Date patient contacted: _____	
Date Inc Lvl entered in PP: _____	

Medical Center Enrollment Form Rev 10/1/16